IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 666 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

NIROMANDAL S/O SHANSIMANDAL

Appearance:

1. Criminal Appeal No. 666 of 2001

Mr A J Desai, Addl. PUBLIC PROSECUTOR for Petitioner No. 1

..... for Respondent No. 1-3

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.P.BUCH

Date of decision: 09/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

This appeal under section 378 (1)(3) of the Criminal Procedure Code, 1973 is preferred against the acquittal of the present respondents for offences punishable under section 20 (B)(1) read with section 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') in Special Case No. 8 of 1999 decided by the learned Special Judge, Jamnagar vide judgment dated 9.5.2001.

2. The facts leading to the filing of the present acquittal appeal by the State shortly stated are that an information was received by P.I., Jamnagar Mr D B Bhatt on 14.9.1999 or thereabout to the effect that one Amalkumar Mandal, residing in Block No.9, Narayannagar in Jamnagar City has kept Ganja illegally for sale in the premises where he has been residing. Pursuant to the said information, discreet inquiry was made and allegation in the information was got verified through Police Constable Hasmukhbhai and it was found that the said Amalkumar from Orissa is available in his house and the said Amalkumar is likely to run away with the stock of Ganja or would do away with the said contraband Ganja at any time. Thereafter the said information was conveyed to Mr J J Barad, Dy.S.P., Headquarters, Jamnagar and was requested to accompany him for raid. Thereafter two panchas were called and they were informed about the information received, personal search of the panchas and the police persons were taken, preliminary panchnama to that effect was drawn and thereafter P.I., Mr D B Bhatt along with Dy.S.P. Mr J J Barad and two panchas along with police staff left the L.C.B. office in a Government vehicle and the information was communicated to the Superintendent of Police, Jamnagar in a sealed envelope and entry to that effect was also made in the station diary; that thereafter the raiding party came to block No.9 and a search resolution as per section 42 of the Act was also made at the said place at about 20.25 hours. Door of block no.9 was knocked. Four persons were found in the room and Amalkumar (known as Amalkumar Orissawala) was called by his name. One person named Amalkumar, son of Nirodmandal got up. The other three persons were Niromandal, son of Shansimandal, Samarmandal, son of Niromandal and the third person was Suchanda Shankar, son of Subhash Shankar. All the four persons were informed about the information received and the signatures were taken on the search resolution. All the four persons knew Gujarati, Hindi and Oriya language. Thereafter, search was made in the room. On the eastern wall of the room, there was a RCC shelf from which one rexine bag of

blue colour was found and in the said bag there were five packets and in one packet loose Ganja was found. The persons were asked whether any licence or permit was possessed by them for keeping the Ganja but they said they did not possess any licence or permit. They were also informed that Dy.S.P. Barad is a Gazetted Officer and if they wanted any other Gazetted Officer to be kept present for search, they can do so but they said that they did not want any other Gazetted Officer to be kept present for the search. Thereafter, search was made and Ganga was found. The same was weighed and found weighing 1 Kg., out of which Ganja weighing 100 gram was kept aside which was divided into two parts and taken as sample and duplicate sample respectively. Sample and duplicate sample of Ganja were kept in brown paper and the same was tied with thread and kept in a separate plastic bag with the slip containing signatures of panchas in each of the plastic bag and the same were kept in a cotton bag and thereafter the same was packed and seal was applied and the same was tied with thread. On each packing the slip containing signatures of panchas were also put/pasted and three seals of the office of P.I., L.C.B. Jamnagar were also applied and the sample and the duplicate sample of Ganja recovered by drawing panchnama mentioning all details and the remaining quantity of Ganja was kept in a plastic bag and the same was sealed and the slip containing signatures of panchas was also pasted and the same were kept in cotton bag and stitched and seals were applied as above and the blue rexine bag was also recovered. That the contraband Ganja were recovered with the help of electric light and there was sufficient light for carrying out the recovery of the contraband. That a panchnama was drawn for personal search of the accused persons and all the accused persons were arrested and brought to the police station along with muddamal Ganja and thereafter a complaint was filed by P.I. Mr D B Bhatt. Thereafter on completion of investigation, charge-sheet was filed against all the four accused persons.

3. Vide Exh.3, charge was framed against all the accused persons under section 20(B)(1) and 29(1) of the Act. The accused persons denied the charge levelled against them and claimed to be tried. The prosecution adduced oral as well as documentary evidence to bring home the guilt to the accused and thereafter statement of the accused under Section 313 of the Criminal Procedure Code was recorded. The learned Special Judge, on appreciation of the evidence on record, found accused No.1-Amalkumar Niromandal guilty of the offences punishable under section 20(B)(1) read with section 29(1)

of the Act whereas the charge framed against accused No.2, 3 and 4 was found not proved and these accused persons were acquitted of the charges levelled against them. It is this judgment and acquittal of accused No.2, 3 and 4 which has been assailed by the State by the present acquittal appeal.

4. We have heard Mr A J Desai, learned APP for the appellant State. He has also produced copies of the record of the trial court namely; deposition of the witnesses examined by the prosecution, copy of the panchnama Exh.11, copy of the rent receipt Exh.15, the copy of FIR Exh.45 and the copy of report of the Public Analyst Exh.48. Since it is stated that these are the only records comprising the trial court records, we have not thought it necessary to call for the original Record and Proceedings of the case from the trial court. We have perused the said records.

5. Exh.45 is the complaint given by the P.I. Mr D B Bhatt of L.C.B., Gandhinagar. It is alleged that information was received that Amalkumar residing at Block No.9, Narayannagar, Jamnagar has been keeping contraband Ganja in his residential premises for the purpose of business and that the said contraband Ganja has been brought from ouside. That the said information was verified and was found to be correct whereupon the raid was carried out in presence of panchas, Dy.S.P & Gazetted Officer and the other police staff and from block No.9 of Narayannagar, the accused Amalkumar along with three other persons were found. Names of these persons are (1) Niromandal (2) Samarmandal Niromandal and (3) Suchandan Shankar.

5.1. It is alleged in the complaint that all the four accused persons were found to have possessed contraband Ganga weighing 1 Kg. from block No.9 of Narayannagar, Jamnagar and the accused persons did not have any licence or permit to possess the contraband. That on search from an RCC shelf on the eastern wall of the said room a rexine bag was found and on search of the same Ganja weighing 1 Kg. was found. The accused persons could not produce licence or permit to posses contraband Ganja. Thereafter, panchnama was drawn and the contraband Ganja was recovered, samples were prepared out of the same for which panchnama was also made. That after the recovery of the contraband Ganja, the accused persons were brought with the remaining quantity of contraband Ganja and the complaint Exh.45 against them was filed.

6. We have considered the evidence of one of the

panch witnesses Bharatbhai Exh.10. He has supported the drawing of panchnama and recovery of the contraband Ganja weighing 1 kg. from block no.9 in presence of the other panch, Dinesh Trivedi, who has also supported the version of the prosecution as regards the recovery of the contraband Ganja weighing one Kg. from the said room of block no.9, Narayannagar. P.W. 4, Savjibhai is the Manager of landlord/owner of block no.9. Perusal of his deposition suggests that he was managing the vacant block no.9 which was of the ownership of Dudabhai, the owner of the land on which block no.9 was constructed, that in the last year, he gave one room of block no.9 on rent to Amalkumar for his residence. Three persons were staying in this room, but he does not know the names of the other persons but the third person was Amalkumar. He does not remember the rent fixed and the block no.9 was given on rent before two months of the incident. Three persons including Amalkumar were occasionally coming to the witness for masonary work and that is how the witness knew them.

7. Panchnama of place of offence and recovery of the contraband Ganga are placed at Exh.11. Perusal of panchnama Exh.11 suggests that nothing else except the rexine bag and the contraband Ganja therefrom was found and recovered. It is pertinent to note that panchnama Exh.11 does not refer to any other article which would suggest the stay/residence of accused no.2, 3 and 4 in the said room so as to connect accused no.2,3 and 4 with the possession and occupation of the said room.

8. Exh.15 is the rent receipt. Perusal of the same suggests that one room on eastern side of block no.9 was given on rent to Amalkumar Orissawala on a monthly rent of Rs.500/- and that Rs.1500/- were received by way of advance rent for the months of July, August and September, 1999.

It will be seen from the deposition of PW 4 and the rent receipt at Exh.15 that one room in Block No.9 was given on rent to Amalkumar (accused No.1) at a monthly rent of Rs.500/- and that the said Amalkumar paid Rs.1500/- by way of rent for three months i.e. July, August and September, 1999.

9. It is not the prosecution case that the room was jointly taken on rent by the other respondents also. The deposition of PW 4 and the rent receipt at Exh.15 clearly suggest that the room was given on a monthly rent of Rs.500/- to Amalkumar only and that the advance rent of Rs.1500/- was also paid by Amalkumar.

10. It is suggested from the FIR Exh.45 as well as the evidence of PW 16 - complainant P.I. Mr D B Bhatt that the information was received to the effect that Amalkumar residing in block no.9 has been keeping/possessing contraband Ganja by bringing it from outside, for the purpose of sale. Thus the information received pertains only to Amalkumar-accused No.1. The information does not refer to Amalkumar along with other persons indulging in the activity of bringing and keeping contraband Ganja in block No.9. It is true that at the time of raid, accused No.2, 3 and 4 were found present in the room but it is not suggested as to their presence in the room was as co-occupants along with Amalkumar in the said room. As pointed out earlier, Exh. 15 specifically refers to Amalkumar only and the evidence of PW 4 Savjibhai also refers to the room having been rented out to Amalkumar. It is not suggested from the evidence as to when accused No.2, 3 and 4 came in this room and have been staying in the said room. Accused no.2 and 3 are the brother and father respectively of Amalkumar. It is not the prosecution case that the said room was jointly given to the other accused persons with Amalkumar also. It is also not the prosecution case that Amalkumar permitted accused No.2, 3 and 4 to stay in the said room along with him or that they were in possession of the said room along with Amalkumar. Under the circumstances, the find of contraband from the room which has been rented out to Amalkumar cannot be connected with either accused no.2,3 and 4 or can it be said that accused no.2, 3 and 4 had any connection with keeping of contraband in the rexine bag in RCC shelf found vide Exh. 11. Even keeping of contraband in the room cannot be said to be with the knowledge of accused No.2, 3 and 4 for want of evidence on this score. Thus, it cannot be said that on appreciation of evidence on record that accused No.2, 3 and 4 were in know of keeping of contraband in the said room much less in conscious possession by accused No.2,3 and 4 of the contraband Ganja found and recovered vide panchnama Exh.11. It is also not suggested as to when accused No.2, 3 and 4 came and started staying in the said room along with accused no.1 and a possibility and cannot be ruled out that their presence in the room at the relevant time may be casual as guests or family members. There is absolutely no evidence to connect accused no.2, 3 and 4 with the blue colour rexine bag from which the contraband Ganja was found and recovered. Thus, all that can be said is that at the time of raid and recovery of contraband Ganja, accused no.2,3 and 4 were physically present in the room and nothing beyond that. That by itself, cannot suggest that accused No.2,

3 and 4 had the knowledge about keeping of contraband Ganja in the room and it cannot be said that they were in conscious possession of the contraband Ganja, when the same was recovered vide Exh.11. No such inference can be drawn looking to the evidence on record. Under the circumstances, we are of the opinion that there is absolutely no evidence which can connect accused no.2, 3 and 4, the present respondents, with the contraband Ganja found from the room of Block no.9 which was taken on rent by Amalkumar, accused no.1.

9. In view of the above, we are of the opinion that the learned trial Judge, on appreciation of evidence, is justified in recording the finding of acquittal in favour of accused No.2, 3 and 4. The finding of acquittal does not call for any interference and the appeal, therefore, being devoid of prima facie merits, is liable to be dismissed at the admission stage.

This appeal is dismissed accordingly.

10.10.2002 [N G Nandi, J.]

[D P Buch, J.]
msp